

Application No. 10/668646
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Draft Amendment
Attorney Docket No. D25.2H-11301-US01

Remarks

This Amendment is in response to the Office Action dated **July 22, 2005**. Claims 1-37 are pending in this application. The Office Action rejected claims 1, 5-10, 12, 15, 17, 19, 22, 23, 26-31, 33 and 34 under 35 USC § 102 over Schutz et al. (US 5370233; hereinafter "Schutz"); rejected claim 32 under 35 USC § 103 over Schutz in view of an official notice; rejected claims 35 and 36 under 35 USC § 103 over Schutz in view of Becker et al. (US 3385429; hereinafter "Becker"); rejected claim 36 under 35 USC § 103 over Schutz in view of Duerr (US 4077516); and further included various double patenting rejections.

By this Amendment, claims 1, 24 and 26 are amended and claim 38 is added. Claim 24 is rewritten in independent form. Support for the amendments and new claim 38 may be found at least in the Figures and in the specification at page 9, lines 18-25 and at page 11, lines 11-18. A terminal disclaimer is also submitted herewith. Applicants reserve the right to prosecute any cancelled subject matter in a subsequent patent application claiming priority to the immediate application. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Allowable Subject Matter

Applicants gratefully acknowledge the Office Action's indication of allowable subject matter in claims 24 and 25. Claim 24 has been rewritten in independent form, and claim 25 depends from claim 24.

However, for the reasons set forth below, Applicants respectfully assert that all of the claims are directed to allowable subject matter and that the application is in condition for allowance.

Double Patenting Rejections

The Office Action rejects various claims under the judicially created doctrine of obviousness type double patenting over:

- 1) US 6588594;
- 2) US 6588594 in view of Roth (US 4119202);
- 3) US Application No. 10/388100; and

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4) US Application No. 10/388100 in view of Roth.

US 6588594 issued from US Application No. 09/902971, to which the immediate application claims priority.

Without forming an opinion as to the validity of the double patenting rejections, Applicants note that the projected expiration date of a patent granted on the immediate application will be the same as the expiration date of US 6588594, regardless of whether or not the immediate application is subject to a Terminal Disclaimer. Therefore, in order to further timely prosecution of the immediate application, a Terminal Disclaimer is enclosed herewith that disclaims the terminal part of any patent granted on the instant application which would extend beyond the expiration date of the '594 patent.

With respect to the double patenting rejections applying US Application No. 10/388100, said Application is now abandoned and the rejections are moot. A copy of the Notice of Abandonment is included herewith.

Accordingly, Applicants request withdrawal of the rejections under the judicially created doctrine of obviousness type double patenting.

Claim Rejections

The Office Action rejects, under 35 USC § 102, claims 1, 5-10, 12, 15, 17, 19, 22, 23, 26-31, 33 and 34 over Schutz. The Office Action also rejects, under 35 USC § 103, claim 32 over Schutz in view of official notice; claims 35 and 36 over Schutz in view of Becker; and claim 37 over Schutz in view of Duerr.

Claim 1 has been amended and recites "the support surface of the first support member and the support surface of the second support member defining a total support area," and "the top pad having a pad surface oriented substantially parallel to the support surface of the first support member, the pad surface having an area that is less than the total support area."

Schutz discloses a top cap 60 having "an upper cap wall 62 and side cap walls 64 depending from the upper cap wall and encompassing the sleeve elements of all the product shipping and display assemblies positioned on the pallet." See Figure 2 and column 4, lines 35-45. Thus, the cap 60 includes sides 64 that encompass products oriented in any support area

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defined by the trays 14. Therefore, a surface area of the top cap 60 will be greater than the area of any support surface defined by a first tray and a second tray of the Schutz assembly. Schutz does not teach a top cap having any other shape or dimensions.

Therefore, Applicants respectfully submit that independent claim 1 is patentable over Schutz. Claims 2-23 and 26-27 depend from independent claim 1 and therefore are patentable over Schutz for at least the reasons discussed with respect to claim 1. Amendments made to claim 1 are believed to render the rejections under 35 USC § 103 moot. Accordingly, Applicants respectfully request the withdrawal of the rejections under 35 USC § 102 and 35 USC § 103.

To the extent that any future rejections are made in view of official notice, Applicants request that the official notice be clearly supported by prior art documentary evidence, or by an affidavit or declaration as provided for in 37 CFR 1.104(d)(2).

Conclusion

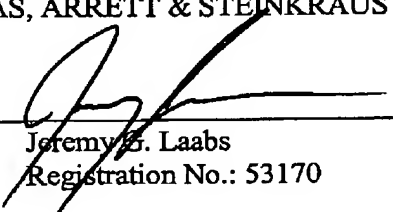
Based on at least the foregoing amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Favorable consideration and prompt allowance of claims 1-38 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEDNKRAUS

Date: December 20, 2005

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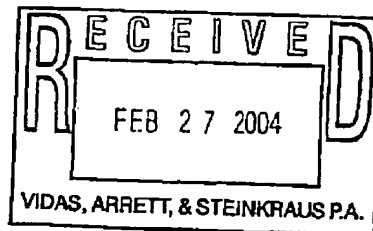
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10/388,100	03/13/2003	Dale C. Andersen	D25.3-9968 - 02	5870
490	7590	02/23/2004		
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185				
			EXAMINER	
			FOSTER, JIMMY G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



Notice of Abandonment	Application No.	Applicant(s)	
	10/388,100	ANDERSEN ET AL.	
	Examiner	Art Unit	
	Jimmy G Foster	3728	

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

This application is abandoned in view of:

- ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 11 July 2003.
 - ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - ☒ No reply has been received.
- ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - ☐ The issue fee and publication fee, if applicable, has not been received.
- ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - ☐ No corrected drawings have been received.
- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
- ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☐ The reason(s) below:

Jimmy G Foster
Primary Examiner
Art Unit 3728

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

U.S. Patent and Trademark Office
PTOL-1432 (Rev. 04-01)

Notice of Abandonment

Part of Paper No. 4